



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74, 76, 78

[MB Docket No. 17-231; FCC 17-121]

Amendment of the Commission's Rules Regarding Maintenance of Copies of FCC Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to eliminate rules that require certain broadcast and cable entities to maintain paper copies of Commission regulations.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket No. 17-231, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at Raelynn.Remy@fcc.gov, or (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 17-121, adopted and released on September 26, 2017. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <https://ecfsapi.fcc.gov/file/0926156892954/FCC-17-121A1.pdf>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. We propose to eliminate the requirement, set forth in section 74.769 of our rules, that licensees or permittees of low power TV, TV translator, and TV booster stations maintain "a current copy of Volume I and Volume III of the Commission's rules."¹ In addition, we propose to eliminate a similar requirement, codified in section 74.1269 of our rules, that licensees or permittees of FM translator and FM booster stations maintain "a current copy of Volumes I (parts 0, 1, 2 and 17) and III (parts 73 and 74)

¹ 47 CFR 74.769.

of the Commission's rules."² The Commission adopted these requirements more than forty years ago as part of its regulation of then recently established broadcast translator services.³ As NAB asserts, such obligations no longer appear necessary given the immediate availability of Commission rules online.⁴ NAB maintains that "[b]roadcasters can easily access and review the rules online, and download and print copies of any rules as needed."⁵ We agree with NAB and tentatively conclude that the requirement to maintain paper copies of rules, which the publisher of the CFR updates annually, no longer remains necessary. We seek comment on this tentative conclusion.

2. We also tentatively conclude that we should eliminate the requirement, set forth in section 76.1714(a), that certain cable operators maintain a current copy of part 76 of the Commission's rules and, if subject to the Emergency Alert System (EAS) rules contained in part 11 of those rules, an EAS Operating Handbook.⁶ Although we recognize the public safety importance of having the EAS Handbook in close proximity, we note that section 11.15 requires that a copy of the handbook "be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions."⁷ Given this separate requirement, we see no need for a duplicate EAS requirement in section 76.1714(a). We seek comment on this tentative conclusion. In addition, we tentatively conclude that we should eliminate from sections 76.1714(c) and 78.67 of the Commission's rules the requirement that CARS licensees maintain a current copy of part 78 of the Commission's rules and, in cases where aeronautical obstruction markings of antennas are required, part 17 of such rules.⁸ The Commission adopted these requirements decades ago when it established a comprehensive regulatory framework to govern then-nascent cable television

² 47 CFR 74.1269.

³ Amendment of Part 74 and Other Parts of the Commission's Rules and Regulations Pertaining to Television Broadcast Translator Stations, Notice of Proposed Rulemaking, 27 FCC 2d 94, para. 1 (1971) (proposing to revise and harmonize rules governing FM and television translator stations). See also id. at 98, para. 12 (adopting section 74.769); id. at 101, Appendix, para. 8 (same); Amendment of Part 74 of the Commission's Rules and Regulations to Permit the Operation of Low Power FM Broadcast Translator and Booster Stations, Report and Order, 35 FR 15383, 15388 (1970) (adopting section 74.1269).

⁴ NAB Comments at 23-24.

⁵ Id. at 24.

⁶ 47 CFR 76.1714(a). The requirements of section 76.1714(a) do not apply to any cable television system serving fewer than 1000 subscribers. 47 CFR 76.1714(b).

⁷ 47 CFR 11.15.

⁸ 47 CFR 76.1714(c), 78.67.

service.⁹ Like the rules applicable to broadcasters discussed above, we believe these rules have outlived their usefulness and no longer serve the public interest because, as ACA notes, the Commission's rules are available online in the electronic CFR.¹⁰ Thus, we tentatively conclude that these obligations are no longer necessary. We seek comment on this tentative conclusion.

3. Parties opposing elimination of any rules discussed in this NPRM should explain how the benefits derived from such rules, if any, outweigh the costs.¹¹ We note that no party in the media modernization proceeding has asserted that any of these rules should be retained.

Initial Paperwork Reduction Act Analysis

4. This document does not contain proposed new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501 through 3520). In addition, therefore, it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4).

Ex Parte Rules

5. Permit-But-Disclose. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.¹² Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the

⁹ Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems, Cable Television Report and Order, 36 FCC 2d 141, 242, Appendix A (1972) (adopting a requirement that cable television system operators maintain a copy of Part 76 of the Commission's rules). See also id. at 257, Appendix A (adopting section 78.67 of the Commission's rules).

¹⁰ ACA Comments at 12.

¹¹ We are not proposing to eliminate the provisions in sections 74.769, 74.1269, 76.1714, and 78.67 that obligate the subject broadcast and cable entities to be familiar with the rules governing their respective operations.

¹² 47 CFR 1.1200 et seq.

presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Requirements

6. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or

by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

7. Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

8. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Additional Information

9. For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau, at raelynn.remy@fcc.gov, or (202) 418-2120.

Initial Regulatory Flexibility Act Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹³ the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) concerning the possible significant economic impact on small entities by the rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).¹⁴ In addition, the NPRM and IRFA

¹³ 5 U.S.C. 603. The RFA, 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121, Title II, 110 Stat. 857 (1996).

¹⁴ 5 U.S.C. 603(a).

(or summaries thereof) will be published in the Federal Register.¹⁵

A. Need for, and Objectives of, the Proposed Rules

11. The proposed rule changes stem from a Public Notice issued by the Commission in May 2017 launching an initiative to modernize the Commission's media regulations.¹⁶ Two parties in the proceeding, the National Association of Broadcasters (NAB) and the American Cable Association (ACA), have argued for elimination of the recordkeeping requirements at issue as outdated and unnecessary. The NPRM proposes to eliminate provisions of the Commission's rules that obligate certain broadcasters and cable entities to maintain paper copies of Commission rules.

12. Specifically, the NPRM proposes to eliminate: (i) the requirement that licensees or permittees of low power TV, TV translator, and TV booster stations maintain a copy of Volume I and Volume III of the Commission's rules;¹⁷ (ii) the requirement that licensees or permittees of FM translator and FM booster stations maintain a copy of Volumes I (parts 0, 1, 2 and 17) and III (parts 73 and 74) of the Commission's rules;¹⁸ (iii) the requirement that certain cable operators maintain a copy of part 76 of the Commission's rules and, if subject to the Emergency Alert System (EAS) rules contained in part 11 of such rules, an EAS Operating Handbook;¹⁹ and (iv) the requirements that cable television relay station (CARS) licensees maintain a copy of part 76 of the Commission's rules and, in cases where aeronautical obstruction markings of antennas are required, part 17 of such rules.²⁰ These proposals are intended to reduce outdated regulations and unnecessary regulatory burdens that can impede competition and innovation in media markets.

B. Legal Basis

¹⁵ Id.

¹⁶ Commission Launches Modernization of Media Regulation Initiative, MB Docket No. 17-105, Public Notice, FCC 17-58 (MB May 18, 2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

¹⁷ 47 CFR 74.769.

¹⁸ 47 CFR 74.1269.

¹⁹ 47 CFR 76.1714(a).

²⁰ 47 CFR 76.1714(c), 78.67. The NPRM also proposes to make conforming changes to sections 74.789, 74.787(a)(5)(viii) and 76.1700(d) if the Commission eliminates the specified requirements in sections 74.769 and 76.1714.

13. The proposed action is authorized pursuant to sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.²¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁴ The rules proposed herein will directly affect certain small television and radio broadcast stations, and cable entities. Below, we provide a list of such small entities.

- Television Broadcasting
- Radio Stations
- Cable Companies and Systems
- Cable System Operators
- Cable antenna relay service licensees

D. Description of Projected Reporting, Recordkeeping, and Other Compliance

²¹ 5 U.S.C. 603(b)(3).

²² 5 U.S.C. 601(6).

²³ 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. 601(3).

²⁴ 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

Requirements

15. Reporting Requirements. The NPRM does not propose to adopt reporting requirements.
16. Recordkeeping Requirements. The NPRM does not propose to adopt recordkeeping requirements.
17. Other Compliance Requirements. The NPRM does not propose to adopt other compliance requirements.
18. Because no commenter provided information specifically quantifying the costs and administrative burdens of complying with the existing recordkeeping requirements, we cannot precisely estimate the impact on small entities of eliminating them. The proposed rule revisions, if adopted, will afford all affected Commission regulatees, including small entities, greater flexibility in the manner by which they access and stay familiar with Commission rules governing their services. No party in the proceeding has opposed the proposals set forth in the NPRM. We thus find it reasonable to conclude that the benefits of eliminating the rules at issue will outweigh any costs.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.

19. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.
20. The NPRM proposes to eliminate the obligation, imposed on certain broadcasters and cable regulatees, to maintain paper copies of Commission rules. Eliminating these requirements is

intended to modernize the Commission's regulations and reduce costs and recordkeeping burdens for affected entities, include small entities. Whereas under the current rules, affected entities must expend time and resources maintaining and updating hard copies of Commission rules, such entities will be able to maintain their familiarity with Commission rules by accessing those rules online. As noted, the proposed rule revisions are unopposed. Thus, we anticipate that affected small entities only stand to benefit from such revisions, if adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

21. None.

22. We adopt this NPRM pursuant to the authority found in sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j).

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,
Federal Register Liaison Officer.
Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 74, 76 and 78 as follows:

PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

2. Section 74.769 is revised to read as follows:

§ 74.769 FCC Rules.

Each licensee or permittee of a station authorized under this subpart shall be familiar with rules relating to stations governed by this subpart.

3. Section 74.787 is amended by revising paragraph (a)(5)(viii) introductory text and the table entry for § 74.769 to read as follows:

§ 74.787 Digital Licensing.

(a) * * *

(5) * * *

(viii) The following sections are applicable to analog-to-digital and digital-to-digital replacement television translator stations:

Applicable Rule Sections	
* * * * *	

§ 74.769 FCC Rules.

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§ 74.789 [Amended].

4. Section 74.789 is amended by removing § 74.769 Copies of Rules and adding § 74.769 FCC Rules.

5. Section 74.1269 is revised to read as follows:

§ 74.1269 FCC Rules.

Each licensee or permittee of a station authorized under this subpart shall be familiar with rules relating to stations governed by this subpart.

PART 76 — MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

2. Section 76.1700 is amended by revising paragraph (d) to read as follows:

§ 76.1700 Records to be maintained by cable system operators.

* * * * *

(d) Exceptions to the public inspection file requirements. The operator of every cable television system having fewer than 1,000 subscribers is exempt from the online public file and from the

public record requirements contained in § 76.1701 (political file); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); § 76.1706 (signal leakage logs and repair records); § 76.1714 (FCC rules); and § 76.1715 (sponsorship identification).

* * * * *

3. Section 76.1714 is amended by revising paragraphs (a) and (c) to read as follows:

§ 76.1714 FCC Rules.

(a) The operator of a cable television system is expected to be familiar with the rules governing cable television systems and, if subject to the Emergency Alert System (EAS) rules contained in part 11 of this chapter, the EAS.

* * * * *

(c) Both the licensee of a cable television relay station (CARS) and the operator or operators responsible for the proper operation of the station are expected to be familiar with the rules governing cable television relay stations.

PART 78 — CABLE TELEVISION RELAY SERVICE

1. The authority citation for part 78 continues to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 78.67 is revised to read as follows:

§ 78.67 FCC Rules.

Both the licensee of a cable television relay station (CARS) and the operator or operators responsible for the proper operation of the station are expected to be familiar with the rules governing CARS stations.

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